

Honorable Jamal N. Whitehead

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

VALVE CORPORATION,)
Plaintiff,) **DECLARATION OF DONALD MCPHAIL**
v.) **IN SUPPORT OF MOTION TO**
LEIGH ROTHSCHILD, ROTHSCHILD) **WITHDRAW**
BROADCAST DISTRIBUTION)
SYSTEMS, LLC, DISPLAY)
TECHNOLOGIES, LLC, PATENT ASSET)
MANAGEMENT, LLC, MEYLER LEGAL) Complaint filed: July 7, 2023
PLLC, AND SAMUEL MEYLER)
Defendants.) Case No.: 2:23-cv-01016
)

I, Donald McPhail, declare as follows:

1. I am attorney with Merchant & Gould P.C., and I am one of the attorneys of record for Defendants Leigh Rothschild; Rothschild Broadcast Distribution Systems, LLC; Display Technologies, LLC; Patent Asset Management, LLC; Meyler Legal PLLC; and Samuel Meyler (collectively, the “Defendants”). I serve as lead counsel for Defendants. I make this declaration on my own information, knowledge, and belief, based on a reasonable investigation, in support of the Motion for Leave to Withdraw as Counsel for Defendants filed concurrently herewith.

1 2. Plaintiff commenced this action by filing its Complaint in June 2023. On
2 September 7, 2023. I filed an Application for Leave to Appear *Pro Hac Vice* (Dkt. 20), which
3 the Court granted on October 2, 2023 (Dkt. 22). Since that date, I have served as counsel of
4 record for Defendants in this matter. On or around September 12, 2024, I provided a proposed
5 engagement letter to the Rothschild Defendants. It included a copy of Merchant & Gould's
6 standard Additional Terms of Representation, which nonpayment of outstanding legal fees
7 would entitle Merchant & Gould to withdraw. I am willing to provide a copy of this document
8 to the Court for in camera review if doing so would assist the Court in deciding this motion.

9 3. Defendants and I agreed that my law firm, Merchant & Gould P.C., would send
10 invoices for this litigation to Defendants Leigh Rothschild, Rothschild Broadcast Distribution
11 Systems, LLC, Display Technologies, LLC, and Patent Asset Management, LLC (together, the
12 "Rothschild Defendants"), and that the Rothschild Defendants would pay the legal fees for all
13 Defendants. At the time, the expectation was that these invoices would be paid by proceeds
14 from an insurance claim made by the Rothschild Defendants relating to this litigation.
15 Merchant & Gould P.C. has sent multiple invoices for legal fees to the Rothschild Defendants
16 since this litigation commenced. None of those invoices has been paid.

17 4. Over the last two months, counsel for Defendants and its support staff have
18 expressed to all Defendants that the unpaid invoices needed to be paid. However, despite
19 counsel's best efforts to resolve this issue, the invoices remained unpaid. On May 1, 2025,
20 counsel for Defendants explained to Defendants that they would seek to withdraw from this
21 case if the Rothschild Defendants did not pay certain sums of unpaid legal fees. The
22 Rothschild Defendants indicated that they could not make such payments until their insurance
23 carrier, which is presently refusing coverage, agrees to cover the Rothschild Defendants' claim
24 or is required by a Court to do so. Based on currently available information, the insurance
25 coverage dispute could take more than a year to resolve, and requiring counsel for Defendants
26 to stay on in this matter while Defendants pursue resolution of the insurance issue places an
27

1 unreasonable financial burden on counsel for Defendants.

2 5. Defendants have indicated that they will oppose this motion to withdraw until
3 they have obtained new counsel. At present, counsel for Defendants understands that
4 Defendants have started searching for new counsel but have not been informed that any such
5 counsel has been engaged.

6 6. It is my understanding, based on conversations between counsel for Defendants
7 and local counsel for Defendants in this matter, Mathew J. Cunanan of DC Law Group, that
8 Mr. Cunanan likewise intends to move to withdraw from this litigation. Thus, leave of the
9 Court is required for me and Eric R. Chad, also of Merchant & Gould P.C., to withdraw.

10 7. On May 2, 2025, counsel for Defendants notified counsel for Plaintiff of their
11 intent to withdraw via a telephone conversation. The parties met and conferred regarding this
12 Motion to Withdraw on May 6, 2025. On May 7, 2025, counsel for Plaintiff represented that
13 Plaintiff would oppose this Motion to Withdraw. A true and correct copy of an email sent by
14 Plaintiff's counsel indicating that it would oppose this Motion to Withdraw, sent on May 7,
15 2025, is attached hereto as **Exhibit 1**.

16 8. On May 8, 2025, counsel for Defendants informed Defendants that, pursuant to
17 Local Rule 83.2(b)(4), Defendants Rothschild Broadcast Distribution Systems LLC; Display
18 Technologies, LLC; Patent Asset Management, LLC; and Meyler Legal PLLC are required by
19 law to be represented by an attorney admitted to practice before the Western District of
20 Washington and that failure to obtain a replacement attorney by the date the withdrawal is
21 effective may result in the dismissal of Defendants Rothschild Broadcast Distribution Systems
22 LLC's counterclaim for failure to prosecute and/or entry of default against Defendants
23 Rothschild Broadcast Distribution Systems, LLC; Display Technologies, LLC; Patent Asset
24 Management, LLC; and Meyler Legal PLLC as to Plaintiff's claims.

25 9. Defendants have been substantially involved in this litigation to date, including
26 completing substantial document production on April 25, 2025. Defendants have produced
27

1 over 36,000 pages of documents and served and responded to multiple sets of written
2 discovery requests. However, we cannot continue to work on this matter without our fees
3 being paid. Accordingly, withdrawal is necessary. Given the current stage of litigation, and my
4 understanding that Defendants are already seeking new counsel, I believe that a forty-five stay
5 should be adequate time for Defendants to procure substitute counsel for this matter.

6 10. To date, counsel for Defendants have incurred substantial legal fees that have
7 not been paid. Though only one deposition has been completed to date, Plaintiff has noticed
8 eighteen (18) depositions of nonparties to occur in connection with this litigation and has
9 indicated its intent to notice at least five (5) party depositions. Thus, I anticipate that Merchant
10 & Gould P.C. will incur hundreds of thousands of dollars in additional legal fees if it were
11 required to stay on as counsel for Defendants until the close of fact discovery on June 25,
12 2025. This would subject Merchant & Gould P.C. to extreme financial hardship.

13 11. In accordance with Local Rule 83.2(b)(1), a copy of this Motion to Withdraw
14 and all supporting documents is concurrently being served on Defendants and counsel for
15 Plaintiff at the time of filing.

16
17 I declare under the penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct to the best of my knowledge.
19

20 Executed on: May 13, 2025

By: /s/ Donald R. McPhail
21 Donald R. McPhail